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ARUTYUN MARSIKYAN and PAYAM  
SAADAT, individually and on behalf of a class of  
similarly situated individuals

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ARUTYUN MARSIKYAN and PAYAM  
SAADAT, individually and on behalf of a  
class of similarly situated individuals,

Plaintiffs,

v.

MERCEDES-BENZ USA, LLC,

Defendant.

NO. CV08-04876 AHM (FMOx)

Date: December 14, 2009  
Time: 10:00 a.m.  
Ctm: 14

Assigned for All Purposes To:  
The Hon. : A. Howard Matz -  
Courtroom 14  
Date Action Filed: June 5, 2008  
Trial Date: None

**ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS SETTLEMENT**

1 The parties to this litigation have entered into a Settlement Agreement dated  
2 November 16, 2009 (“Agreement”), which if approved, would resolve this action on  
3 a class basis. Plaintiffs have filed a Joint Motion for Preliminary Approval of the  
4 settlement set forth in the Agreement, which Defendant Mercedes-Benz USA, LLC  
5 (“MBUSA” or “Defendant”) supports. The Court has read and considered the Joint  
6 Motion for Preliminary Approval, the parties’ memoranda in support, the Agreement,  
7 various declarations filed by the parties and all exhibits thereto, and finds there is a  
8 sufficient basis for granting preliminary approval of the Settlement, directing that  
9 notice be disseminated to the Class, and setting a hearing at which the Court will  
10 consider whether to grant final approval of the Settlement.

11 The Court now GRANTS the motion for preliminary approval and makes the  
12 following findings and orders:

13 1. All defined terms used in this Order have the same meanings as set forth  
14 in the Agreement.

15 2. The Court preliminarily certifies, for settlement purposes only, the  
16 following Settlement Class (the “Class”) and Sub-Class pursuant to Rule 23(b)(3) of  
17 the Federal Rules of Civil Procedure:

18 Class: All persons throughout the United States (including Puerto Rico) who  
19 currently own or lease a model year 2001 through 2006 Mercedes-Benz S-  
20 Class (W220) or CL-Class (W215) vehicle.

21  
22 Sub-Class: All persons throughout the United States (including Puerto Rico)  
23 who previously owned or leased a model year 2001 through 2006 Mercedes-  
24 Benz S-Class (W220) or CL-Class (W215) vehicle, and who incurred out-of-  
25 pocket, unreimbursed expenses for repair of water damage due to a clogged  
26 reed valve in the air/water duct during the period in which they leased or  
27 owned that vehicle.

1 Excluded from the Class and Sub-Class are:

2 (a) all prior owners or lessees of the Vehicles who did not  
3 incur out-of-pocket, unreimbursed expenses for repair of water damage  
4 due to a clogged reed valve in the air/water duct during the period in  
5 which they leased or owned the vehicle;

6 (b) the Judge assigned to this case and his or her immediate  
7 family;

8 (c) all individuals or entities claiming to be subrogated to the  
9 rights of Class Members;

10 (d) vehicles currently owned by or leased to MBUSA, its  
11 parents, subsidiaries, affiliates and dealers, and their officers, directors  
12 and employees; and

13 (e) any individuals with claims for personal injuries.

14 Class Vehicles are Mercedes-Benz Vehicles distributed by MBUSA in the  
15 United States. The Class Vehicles consist of all 2001-2006 Model Year S-Class  
16 (W220) and CL-Class (W215) vehicles.

17 For purposes of simplicity in this Order, hereafter members of the Class and  
18 members of the Sub-Class will collectively be referred to simply as the "Class" or  
19 the "Settlement Class."

20 3. The Court appoints plaintiffs Arutyun Marsikyan and Payam Saadat to  
21 serve as Class Representatives.

22 4. The Court appoints Stephen M. Harris of Knapp, Petersen & Clarke, and  
23 Robert L. Starr of the Law Offices of Robert L. Starr to serve as Class Counsel.

24 5. The Court finds that, for the purpose of settlement only, the  
25 requirements of Rule 23 of the Federal Rules of Civil Procedure are met by the  
26 Settlement Class. Joinder of all Class Members, consisting of the owners and lessees  
27 of all Class Vehicles distributed by MBUSA in the United States (including Puerto  
28 Rico) in a single proceeding would be impractical, if not impossible, because of their

1 numbers and dispersion. Common issues exist among Class Members and  
2 predominate over questions affecting only individual Class Members. Plaintiffs'  
3 claims are typical of those of the Class, as Plaintiffs formerly or presently own(ed) or  
4 lease(d) Class Vehicles and Plaintiffs also both sustained water damage to their  
5 vehicles as a result of reed valve clogging. Plaintiffs and their counsel will fairly and  
6 adequately protect the interests of the Class; Plaintiffs have no interests antagonistic  
7 to those of the Class, and have retained counsel experienced and competent to  
8 prosecute this matter on behalf of the Class. Finally, a class settlement is superior to  
9 other available methods for a fair and efficient resolution of the controversy.

10         6. The certification of the Class for settlement purposes shall be without  
11 force or effect if: (a) the Court does not give final approval to the Settlement or does  
12 not enter judgment substantially as contemplated in the Agreement; or (b) the  
13 Court's approval of the Settlement and/or entry of a final approval order and  
14 judgment are reversed or substantially modified on appeal.

15         7. The Court preliminarily approves the parties' proposed Settlement,  
16 finding that the terms of the Settlement appear sufficiently fair, reasonable, and  
17 adequate at this point to warrant dissemination of notice to Class Members so that  
18 they can evaluate the terms themselves, and to warrant the setting of a hearing to  
19 consider final approval of the Settlement. The Court finds that the settlement  
20 contains no obvious deficiencies and that the parties entered into the Agreement in  
21 good faith, following arms-length negotiation between their respective counsel.

22         8. The Court hereby approves the form and procedures for disseminating  
23 the settlement Notice to the Class Members as set forth in the Agreement. The Court  
24 finds that the Notice to be given constitutes the best notice practicable under the  
25 circumstances, and constitutes valid, due, and sufficient notice to Class Members in  
26 full compliance with the requirements of applicable law, including the Due Process  
27 Clause of the United States Constitution.

28         9. MBUSA shall arrange for the printing and mailing (via U.S. Mail) of the

1 class Notice to all Settlement Class members who are identified as current registered  
2 owners or lessees according to records obtained from RL. Polk & Co. or similar  
3 service. Such class Notice shall be mailed by MBUSA or by the Claims  
4 Administrator with the Claim Form. MBUSA or the Claims Administrator will  
5 utilize national address databases and will otherwise make reasonable efforts to  
6 determine updated address information in order promptly to re-mail notices by first  
7 class mail to any Class Member whose notice is returned as undeliverable. The  
8 Claims Administrator will maintain a website that contains information about the  
9 settlement and copies of related documents, including the class notice and claim  
10 form. The Claims Administrator will also set up a toll-free number available to class  
11 members who have questions about the claims process or need additional  
12 information. No later than February 26, 2010, or within 30 days of entry of the  
13 Preliminary Approval Order, whichever is later, MBUSA shall (a) cause individual  
14 notice, substantially in the form attached to the Errata to the Harris Declaration as  
15 Exhibit 1-A along with a claim form, substantially in the form attached to the Errata  
16 to the Harris Declaration as Exhibit 1-B, to be mailed to each such identified Class  
17 Member, and within the deadline set forth below MBUSA shall cause a summary  
18 notice, substantially in the form attached to the Errata to the Harris Declaration as  
19 Exhibit 1-C, to be published in the Wall Street Journal on the same weekday in two  
20 consecutive weeks. The parties shall modify the individual notice, Exhibit 1-A, to  
21 define the term "DTB P-B-83, 10/75" the first time they use it in paragraph 5c. In  
22 the "What Benefits Can I Get?" section on the first page of the publication notice,  
23 Exhibit 1-C, the parties shall specify that the Claims Deadline is no later than 120  
24 days after the Court's Final Approval of the settlement. The last day for the  
25 publication of the summary notice shall be no later than 10 days after the mailing of  
26 the Class Notice. The Court authorizes the parties to make non-material  
27 modifications to the Class Notice, the summary notice and the claim form prior to  
28 mailing or publication for formatting purposes or if they jointly agree that any such

1 changes are necessary under the circumstances.

2 10. As set forth in the Agreement, MBUSA shall bear all costs and expenses  
3 in connection with providing notice to the Class and administering the Settlement,  
4 including, but not limited to, all fees, costs, and expenses of the Claims  
5 Administrator.

6 11. MBUSA shall comply with the requirements of 28 U.S.C. § 1715(b) and  
7 serve, upon the appropriate State official of each State in which a Class Member  
8 resides and the appropriate Federal official, a notice of the proposed Settlement  
9 consisting of:

- 10 (a) the original complaint and all amended complaints in this Action;  
11 (b) notice of the Fairness Hearing described below;  
12 (c) the individual notice for mailing and summary notice for  
13 publication;  
14 (d) the Agreement;  
15 (e) this Order;  
16 (f) (1) if feasible, the names of Class Members who reside in each  
17 State and the estimated proportionate share of the claims of such Class Members to  
18 the entire settlement to that State's appropriate State official; or (2) if the provision  
19 of information under subparagraph (1) is not feasible, a reasonable estimate of the  
20 number of Class members residing in each state and the estimated proportionate  
21 share of the claims of such Class Members to the entire Settlement; and  
22 (g) Any written judicial opinion relating to the materials described  
23 under subparagraphs (a) through (f).

24 MBUSA shall also provide copies of the foregoing submissions to Class  
25 Counsel.

26 12. A hearing on entry of Final Judgment and Order of Dismissal, the award  
27 of fees and expenses to Class Counsel, and incentive payments to the Class  
28 Representatives (the "Fairness Hearing") shall be held on May 17, 2010 at

1 10:00 a.m., in Courtroom 14 at the United States District Court, Central District of  
2 California, 312 North Spring Street, Los Angeles, California 90012. At the Fairness  
3 Hearing, the Court will consider: (a) whether the Settlement should be approved as  
4 fair, reasonable, and adequate for the class; (b) whether a judgment granting approval  
5 of the Settlement and dismissing the lawsuit with prejudice should be entered; and  
6 (c) whether Class Counsel's application for attorneys' fees and expenses and  
7 incentive awards for the named Plaintiffs should be granted.

8 13. Any Class Member shall have the right to opt out of the Class and the  
9 settlement by sending a written request for exclusion from the Class to the  
10 address(es) listed in the Class Notice, postmarked no later than 45 days after mailing  
11 of the Class notice. To be effective, the request for exclusion (or opt-out request)  
12 must: (a) state the Class Member's full name and current address, the model year  
13 and make of the Vehicle currently owned or formerly owned, and the Vehicle  
14 Identification Number ("VIN"); (b) clearly set forth his/hers/its desire to be excluded  
15 from the Settlement and from the Settlement Class; and (c) be signed by the Class  
16 Member. Any Settlement Class Member who submits a timely and valid request for  
17 exclusion will not be entitled to participate in the Settlement and cannot object to the  
18 Settlement. Any Settlement Class Member who does not submit a timely and valid  
19 exclusion request shall be subject to and bound by the Settlement and every order or  
20 judgment entered concerning the Settlement.

21 14. Any Settlement Class Member who intends to object to final approval of  
22 the Settlement or the Fee Application must, on or before 45 days after mailing of the  
23 Class Notice, file any such objection with the Clerk of the Court, and provide copies  
24 of the objection to Class counsel, MBUSA's counsel and the Claims Administrator at  
25 the addresses provided in the Class Notice. Any objection to the Settlement must  
26 include the following information concerning the objector: (i) full name, address and  
27 telephone number; (ii) model year and VIN of his/her/its Vehicle(s); (iii) a statement  
28 of the objection(s) asserted, including the factual and legal grounds for each such



objection; (iv) copies of any documents the objector wishes to submit in support of his or her position; and (v) a list of any other objections he or she has submitted to any class action settlements in any state or federal court in the United States in the past five (5) years. If he or she has not objected to any other class action settlement in any court in the United States in the past five (5) years, he or she shall affirmatively so state in the written materials provided in connection with the objection to this Settlement. If the objection is presented through an attorney, the written objection must also include: (i) the identity and number of Class Members represented by objector's counsel; and (ii) the date the objector's counsel assumed representation of the objector. If the objector intends to appear at the Fairness Hearing, individually or through counsel, the objecting Class Member must file with the Clerk of the Court and serve upon all counsel designated in the Class Notice, a notice of intention to appear at the Fairness Hearing ("Notice of Intention to Appear"). The Notice of Intention to Appear shall be filed no later than 21 days prior to the Final Approval Hearing (i.e., no later than April 26, 2010). The Notice of Intention to Appear must: (i) state how much time the Class Member and/or counsel anticipates needing to present the objection; (ii) identify, by name, address, and telephone number any witnesses the Class Member and/or his/her/their attorney intends to present; (iii) identify all exhibits the Class Member and/or his/her/their attorney intends to offer in support of the objection; and (iv) attach complete copies of all such exhibits.

15. Any Class Member who does not provide an Objection and/or Notice of Intention to Appear in complete accordance with the deadlines and other requirements set forth herein and in the Class Notice will be deemed to have waived any objections to the Settlement and shall be barred from speaking or otherwise presenting any views at the Fairness Hearing or from pursuing any appeals.

16. Counsel for the respective parties shall file memoranda, declarations, or other statements and/or materials in support of the request for final approval of the



1 parties' Settlement, no later than 14 days prior to the Final Approval hearing (i.e., by  
2 May 3, 2010).

3 17. Class Counsel shall file an application for an award of attorneys' fees  
4 not to exceed \$1.5 million and costs not to exceed \$35,000 and for incentive awards  
5 not to exceed \$10,000 each to the Representative Plaintiffs ("Fee Application) no  
6 later than 14 days prior to the Final Approval hearing (i.e., by May 3, 2010).

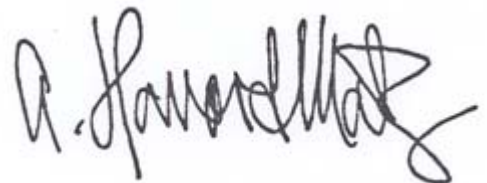
7 18. The last day for counsel to file correspondence received from opt-outs  
8 and objectors shall be 10 days prior to the Final Approval hearing (i.e., by May 7,  
9 2010).

10 19. The date and time of the Fairness Hearing is currently scheduled for  
11 May 17, 2010, at 10:00 a.m.

12 20. The Court reserves the right to continue the date of the Fairness Hearing  
13 and related deadlines. In that event, the revised hearing date and/or deadlines shall  
14 be posted on the website maintained by the Claims Administrator, and the parties  
15 shall not be required to re-send or re-publish the notices.

16 21. All further proceedings in this litigation (including, but not limited to,  
17 any existing discovery obligations) are ordered stayed until final approval of the  
18 Settlement or termination of the Agreement, whichever occurs earlier, except for  
19 those matters necessary to obtain and/or effectuate final approval of the settlement.

20 **IT IS HEREBY ORDERED.**



21  
22  
23 Dated: December 18, 2009

24 Hon. A. Howard Matz  
25 United States District Court Judge  
26  
27  
28